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European Union, Germany and Security Sector Reform in Afghanistan

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1. Introduction

As a follow-up to the Bonn I Conference on Afghanistan in November/December 2001, the international donors conceptualized the Security Sector Reform (SSR) as part of the overall *Bonn Process*. In order to assess the progress and shortcomings of the SSR and the conceptual corrections that have been made, the following issues will be analyzed:

- Core task
- Conceptual flaws
- Initial approach
- Political deficits: counter-narcotics
- Corrections due to lessons learned: police
- Congruence with Afghan reality: the justice system

2. SSR: core task

The SSR was to serve the basic purpose of transforming distorted war structures into legitimate and sustainable state structures. The intention was to achieve two basic structural transformations which were closely interlinked:

- *Economic transformation*: The Afghan war economy depended on illegal profits from the drug economy and the flourishing smuggling business. In addition, hidden external funding from outside Afghanistan provided another important source of revenue: on the one hand from Islamist networks based in Saudi Arabia, Dubai and other Arab countries; on the other from Western countries – in the form of humanitarian assistance for the starving Afghan people, but also secret financial support for anti-Taleban war factions. The aim of the SSR was to overcome the structural dependence and create a new post-conflict economic order based on legal activities and state revenue.
- *Political transformation*: The 23 years of war and conflict and, in particular, the last phase of the civil war in the 1990s resulted in a fragmented power structure in which the quasi-state Taleban regime and a number of big and small local “war entrepreneurs”

vied for dominance. The latter had frequently re-aligned themselves under the umbrella of the so-called “Northern Alliance”. The alliance mainly consisted of former Mujahedin commanders (after 2001 renamed into “Jihadi leaders”) who were internally divided. The SSR, it was hoped, would serve to break the political grip of the “war entrepreneurs” by disarming and demobilizing them. Those willing to accept the emerging political system could integrate themselves in the post-conflict political framework.

This was a huge task indeed! Moreover, it was a task which was to be achieved without having agreed on a peace treaty as a first step towards establishing a new political order. Normally, a peace treaty defines the general framework in which the “war order” is to be transformed into a “peace order”. Furthermore, a peace treaty helps to outline the framework in which the SSR can start to operate. However, in the absence of a peace treaty in Afghanistan, no basic agreement between the former war enemies was achieved. And, even more important, a major section of the Afghan population was excluded from the negotiations during the Bonn I Conference: the Pashtuns from Southern Afghanistan. Neither those Pashtun commanders who participated in the conference nor Hamid Karzai, who was nominated as interim president due to strong US interference in the proceedings, were considered as credible representative by Pashtun tribes in South Afghanistan. As a consequence, the structural transformation started with a basic structural flaw. These “birth defects” overshadowed the building of a new political framework and impeded the implementation of the SSR.

3. SSR: conceptual flaws

The SSR strategy suffers from the same flaws as the international approach toward state-building in Afghanistan. In the following, those pillars of the SSR which have been coordinated by European states are taken as case studies to illustrate the inappropriate approach of the international plan in general. A fundamental flaw has been that the envisioned end-state was far too ambitious and too Western-oriented. The timeframes proposed to achieve the end-state and the benchmarks have turned out to be entirely unrealistic. Furthermore, setting out to introduce a Western-style “liberal market democracy” in the foreseeable future is a purely technocratic approach. It can be argued with full justification that a Western-style political system is not at all appropriate for the Afghan state in view of her historical legacy and specific social, religious and cultural traditions. In the meantime, international donors have quietly acknowledged this fact and, instead, have begun to highlight how significant “Afghan ownership” is.

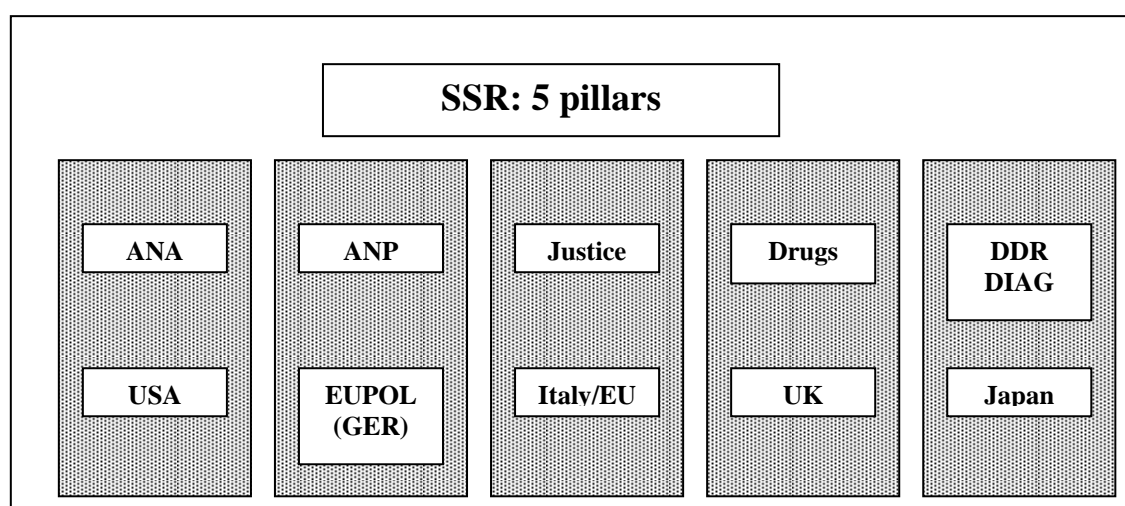
The planning approach, too, has suffered from similar flaws. State-building has been pursued in a top-down instead of a bottom-up manner, which looks like the futile attempt to construct a house from the roof downwards. The main planning documents – including the “Afghanistan National Development Strategy” (ANDS) as the latest one – were formulated by Western and Afghan technocrats who were not familiar with the situation in the Afghan hinterland. A consultation process took place, but it was confined to the Afghan government and a small elite in Kabul. By contrast, the Afghan public in the provinces was not consulted in a credible manner, thus belying the claim of promoting “Afghan ownership”. The errant approach of building the “Afghan house” without a basement prevented a transformation of

local power structures. Since local power brokers have not sufficiently been weakened, the police reform has suffered severe setbacks. Last but not least, coordination among the international donors is poor because national interests and divergent priorities have prevailed.

4. SSR: initial approach

During the Bonn Process the SSR was organized in such a way that each of the five pillars was coordinated by one donor country: building up the Afghan National Army (ANA) by the U.S.; building up the Afghan National Police (ANP) by Germany; reforming the justice sector by Italy; Counter-Narcotics (drugs) by the U.K.; and Disarmament, Demobilization and Reintegration (DDR) and its successor programme Disbandment of Illegal Armed Groups (DIAG) by Japan (see diagram 1).

Diagram 1: Five pillars of the SSR



The approach suffered from two disadvantages: in structural terms the five pillars were not interlinked with each other, and in political terms each nation interpreted its lead task in a different way. As a result, progress in the five sectors varied considerably. In summer 2007, when Germany realized that it could not mobilize sufficient resources both in terms of funds and personnel, the European Union (EU) took over as “key nation” (the new term for the lead nation) and established the EUPOL mission. At the same time, Italy was supported by the EU in speeding up the slow progress in the justice sector.

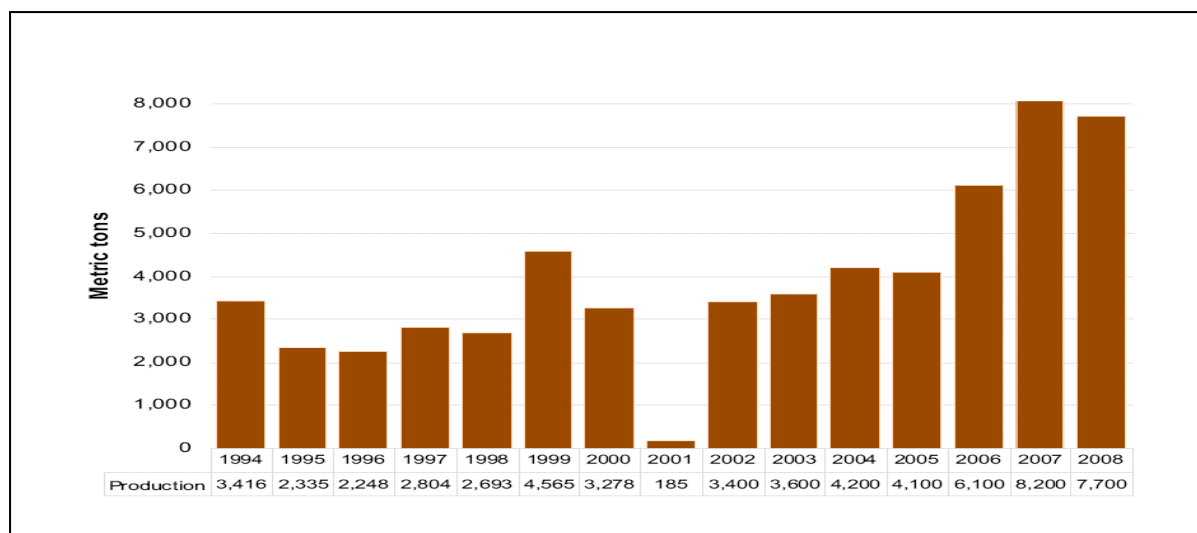
5. Political deficits: counter-narcotics

Diagram 2 clearly shows that the attempt to reduce the spiralling drug production has failed. Several reasons can be cited. As the following example illustrates, the neglected reform of the justice sector and widespread corruption have impeded the performance of other sectors such as counter-narcotics.

If a local policeman arrests a drug trafficker, the latter immediately calls his relative, who has the right political connections in Kabul. As a result the arrested person is released within one or two days, facilitated by an adequate bribe. One can hardly expect the policeman to ever again arrest a drug trafficker until a functioning justice system is established and government structures are free of corruption. Another obstacle to implementing an effective counter-

narcotic policy is the strong, often counterproductive U.S. interference. British attempts are sometimes thwarted by unannounced U.S. actions. It has happened more than once that a U.S. special eradication team together with an Afghan unit is suddenly dispatched to a particular district to destroy the poppy fields, thus provoking local demonstrations and undermining British efforts to cooperate with Afghan local officials.

Diagram 2: Potential Opium Production 1994 – 2008 (in metric tons)



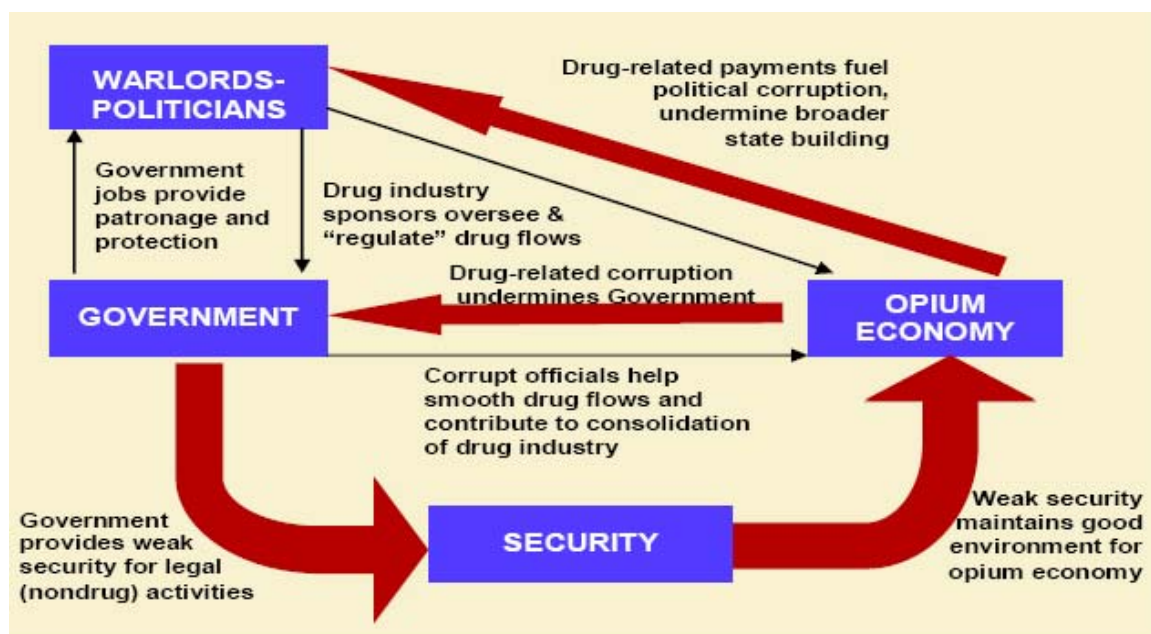
Source: United Nations Office on Drugs and Crime (UNODC), Afghanistan Opium Survey 2008. Executive Summary, August 2008, S. 9; [http://www.unodc.org/documents/publications/Afghanistan Opium Survey 2008.pdf](http://www.unodc.org/documents/publications/Afghanistan%20Opium%20Survey%202008.pdf)

A major factor is the strong correlation between drug production and insecurity caused by the growing insurgency. There has been a geographical relocation of the major production centres: while drug production in the north has decreased, it has significantly increased in the southern provinces, where the insurgency has grown stronger and stronger. However, this is only part of the picture, as the linkage between political patrons and the drug economy reveals (see diagram 3). This linkage dates back to the war economy. Due to the “birth defects” of the Bonn Process, former war entrepreneurs have been co-opted by President Karzai into the political system. When they are allowed to turn themselves into influential politicians, they also integrate their drug-funded clientele systems into the emerging power structure.

After the Afghan presidential elections in October 2004, a vicious circle of convergent interests distorted the new political system (see diagram 3). The reorganized power elites and the Karzai government consolidated their cooperation. President Karzai secured for himself the political support of the “warlords-turned-politicians”. His political protection enabled the politicians to strengthen their patronage systems in the state institutions as well as in their regional strongholds. The Kabul government was too weak to effectively protect legal activities. The weak security environment allowed the drug economy to flourish. As a routine, government officials received bribes from the drug economy to let drug convoys pass uncontrolled through Afghan territory and across the border. Enormous illegal money transfers fuelled political corruption and weakened the new state institutions. The mighty political patrons of the drug economy (high-ranking government officials and illegal key

traffickers) jointly monitored and regulated the production and trafficking of drugs. As a consequence, the structural transformation of the drug-based war economy was impeded and a “criminalized peace” emerged as the new political order.

Diagram 3: Vicious circle between political patrons and the drug economy

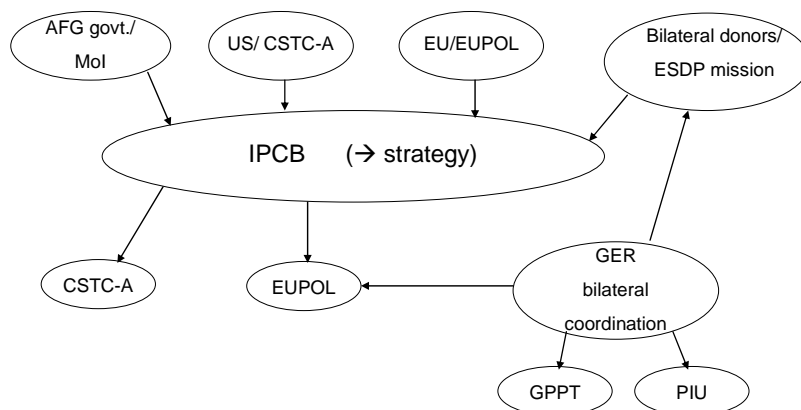


Source: William A. Byrd, Responding to Afghanistan’s Opium Economy Challenge: Lessons and Policy Implications from a Development Perspective, World Bank, March 2008, S. 15.

http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2008/03/04/000158349_20080304082230/Rendered/PDF/wps4545.pdf

6. Corrections due to lessons learned: police

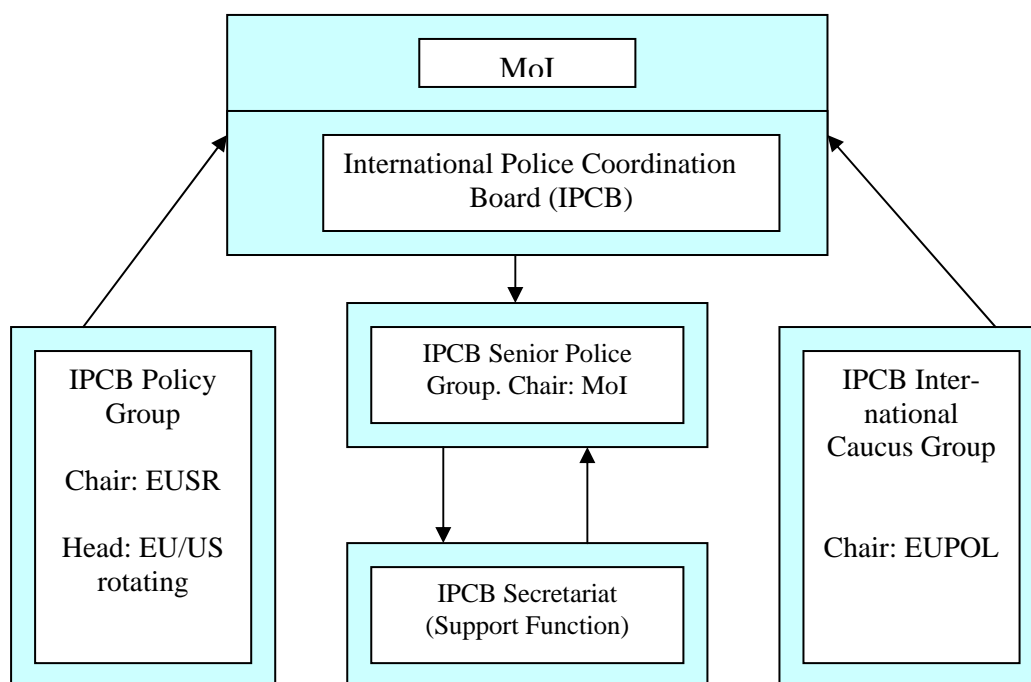
The German long-term top-down training approach with its preference for quality over quantity contributed to a poor reform performance in the early phase. The rival concepts of Germany and the United States also impeded reform progress because the U.S. has focused on the opposite priority: quickly turning out high numbers of policemen with little regard for their level of preparation. Ongoing controversies among several donors involved in building up the Afghan National Police (ANP) have further hampered the reform. Finally, a willingness to learn from previous mistakes has started to prevail. Most importantly, procedures have been introduced to better coordinate conceptual approaches and contributions. Donors like the U.S. (the biggest donor), Germany, the new EUPOL mission, Norway and many other countries have made a serious effort to jointly speed up the training process. However, a word of caution has to be mentioned. In principle it is more difficult to build up a police force than an army. A national police force has to perform many different tasks, which means that police must operate in close contact with society. As a consequence, the police can only be successfully reformed if the society as a whole also changes. Police reform must be seen as part of a comprehensive reform of the rule of law system. Better governance, functioning state institutions, and a legal system are complementary components of successful police reform.

Diagram 4: Planning Structure of the Police Reform

The German contribution (multilateral via the ESDP mission and bilateral via German projects) is taken as an example in order to outline the new planning structure (see diagram 4). The main coordinating body is the International Police Coordination Board (IPCB), which formulates the strategy. Several actors consult the IPCB: the Afghan Ministry of Interior (MoI), the US “Combined Security Transition Command-Afghanistan” (CSTC-A) responsible for building up the Afghan Army and Police, the EU-led EUPOL mission, and a number of bilateral donors that are contributing to the police reform under the EU European Security and Defence Policy pillar (ESDP). The strategy is being implemented by the US CSTC-A, the EUPOL mission and directly by bilateral donors. In the case of bilateral German contributions, the projects are coordinated by the GTZ-led “Project Implementing Unit” (PIU) and the “German Police Project Team” (GPPT).

In November 2008 a new institutional structure was proposed for the IPCB (see diagram 5):

Diagram 5: Proposed new institutional structure of IPCB (November 2008)



The main body consists of the Afghan Ministry of Interior (MoI) and the IPCB, which takes strategic and operational decisions. Informal coordination takes place in two bodies: the IPCB Policy Group (bilateral donors and major organisations) and the IPCB International Caucus Group (EUPOL, US Embassy, CSTC-A, UNAMA, NATO, EUSR, European Commission and ISAF). The IPCB gives directions and guidelines to the Senior Police Group, which tasks its Secretariat with the implementation. The intended result should be better coordination among the various contributing nations.

7. Congruence with Afghan reality: the justice system

The reform of the justice sector has basically been ignored by all donors, although it is the key sector for reforming the other SSR pillars. Performance has been and still is very poor. It has been impeded by a conceptual rivalry between the lead nation Italy and the U.S. as well as by inadequate financial allocation by the donor community in general. In summer 2007, the European Union decided to support Italy with substantial financial assistance. A joint effort by US, Italian, German and other organisations has been made to better coordinate their contributions.

The disappointing progress in reforming the justice system has been caused by several factors. Apart from the insufficient funding, the physical infrastructure such as court houses or prisons was almost completely demolished during the war. Even more crippling has been the lack of legal personnel. It takes many years to train judges, prosecutors, lawyers, and prison staff. Appropriate training institutions have to be established, laws approved, and a legal curriculum worked out in accordance with the new constitution. However, the main obstacle is of political and conceptual nature: the international community has completely ignored traditional practices of mediating or solving disputes in everyday life. Instead, it has put a political premium on Western-oriented secular law and has been quick to criticize any attempt to enforce Sharia law.

Reality in Afghanistan is determined by the simultaneous and often conflictual existence of three different legal systems: Sharia law, statutory laws, and numerous customary laws. The conflict between the Sharia and statutory (secular) law was already built in the constitution of January 2004. With the backing of the U.S., a political compromise was reached during the Constitutional Loya Jirga in December 2003. Elements of Sharia law (Hanafi rite) were enforced without clarifying the legal compatibility between them and elements of statutory law. The inherent clash of values between religious and secular law was not openly addressed because the issue was too sensitive politically. While Sharia law is socially widely accepted by the Afghan people, the significance of statutory laws remains weak and limited to those sections where they can be undisputedly applied such as commercial law and similar legal issues.

But political controversies over the application of Sharia law have neglected the fact that the third legal system is actually the dominant practice in Afghanistan. Afghanistan is a multi-ethnic society. Over the centuries each ethnic group has handed down customary laws in their local language. They have not been codified, are interpreted according to local traditions, and are equated by the local people with Sharia law. How dominant customary laws are in every day life is illustrated by the following figures. It has been estimated that approximately 90 per cent of local arbitration is decided by a village shura according to customary laws. Only if local arbitration fails will a government-instituted court be approached – and then only by the conflict party that can afford to bribe the poorly-trained judge! This paradox explains why in certain districts local disputes are informally handled by insurgents; Taleban have so far been perceived as being not corrupt.

Neither these practical implications nor the inherent clash of values were taken into consideration when the international community conceptualized a reform of the justice sector. The failure to do so largely explains the poor reform progress of justice as the core sector of a comprehensive reform of the security sector.

8. Outlook

Currently the U.S. and the international community are revising their basic approach towards state-building in Afghanistan. In this context, it is necessary to address some of the most relevant challenges facing the SSR. The consequences of the inherent clash of values need to be discussed. If the police and justice sector in particular are reformed by “Afghanizing” them, then acceptable criteria need to be clarified. The international community should consider how a downgraded end-state can be made compatible with a future political system shaped by “Afghan ownership”. Timeframes must be realistically adjusted to correspond to a gradual transformation of Afghan society determined by its own socio-cultural traditions. Last but not least, decisions to expand quantitatively the ANA and ANP should take into consideration that a long-term fiscal basis needs to be created in order to maintain large security forces.